

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
EUGENE DIVISION

WELLS FARGO BANK, N.A.;)
)
Plaintiff,) Civil No. 11-6248-TC
)
v.) ORDER
)
ANDREW G. CLARK;)
)
Defendant.)
_____)

Introduction

Plaintiff Well Fargo bank, N.A., (Wells Fargo) moves for an order enjoining the defendant Andrew Clark (Clark) from publishing, controlling, disclosing or retaining any Well Fargo equipment, confidential customer information or trade secrets that he may have in his possession, from violating his Employment Agreement and his Agreement Regarding Trade Secrets, Confidential Information with plaintiff and ordering defendant to return any and all such information to plaintiff within 24 hours of this order. [#1].

Plaintiff also moves the court to issue the injunction without requiring them to post a bond. [#1]

Defendant Clark appearing *pro se* responds in voluminous filings to both plaintiff's complaint and the court's order to show cause in writing, seeking an order dismissing the plaintiff's motion for preliminary injunction, vacating the temporary restraining order and asserting a whistleblower defense. [#6; #12].

Background

Plaintiff, Well Fargo employed Clark as a Home Mortgage Consultant from September 1, 2009 until he was terminated for "repeated unprofessional conduct" on June 28, 2011. [#1-pp.4-5].

Shortly after Clark began working at Wells Fargo he executed an employment agreement that included: (1) specific prohibition from removing any file materials upon termination; (2) an agreement to maintain plaintiff's confidential and proprietary information (information) in confidence and to return all notes, copies, packages, computer discs/drives/storage and any other material containing plaintiff's information at plaintiff's request. [#1-p.4; #3-Ex.1, pp.3-6]. Wells Fargo provided a laptop computer for defendant's use which his employment agreement specifically stated was to be used for business use only and to be returned (along with and all copies of any software), upon his termination. [#1-pp.4-5]. Clark also executed an agreement regarding trade secrets and

confidential information (confidentiality agreement) in which he promised to keep all plaintiff's information confidential and to immediately return all records and confidential information upon his termination. [#1-pp.5-6; #3-Ex. 1, pp.7-9].

Plaintiff alleges that defendant Clark was disciplined repeatedly during June 2011, for sending emails to Elise Reiser in Wells Fargo's Human Resources department as well as other Wells Fargo employees that plaintiff deemed inappropriate, irrelevant to defendant's employment and in violation of Wells Fargo's electronic communication policy. [#1-p.6]. On June 27, 2011, when Ms. Reiser contacted defendant to direct him to stop sending these inappropriate emails he allegedly yelled and swore at her. *Id.* As a result Clark was terminated the next day, on June 28, 2011. *Id.*

Subsequent to defendant's termination on June 28, 2011 and again on July 22, 2011, plaintiff requested that Clark return the laptop that he had been issued. [#1-p.7] The laptop was not returned until August 1, 2011 when two unidentified individuals dropped it off at Clark's former workplace in Eugene, Oregon. *Id.* The laptop was returned, wrapped in a paper bag and seriously damaged. *Id.* The laptop could not be opened and every portal appeared compromised. *Id.* Plaintiff has retained a computer forensic specialist to determine the extent of damage and whether any information was downloaded or scrubbed from the computer. *Id.*

In early August 2011, plaintiff became aware that a website

entitled "Wells Fargo Homepage Crimepage" was located at www.wfopsreport.com. [#1-p.7]. Plaintiff alleges that defendant maintains the site based on the documents posted on the website that purport to be authored by Clark and because Clark has sent Wells Fargo employees and its counsel emails originating from aclark@wfopsreport.com which shares a domain name with "Wells Fargo Homepage Crimepage." *Id.* Plaintiff alleges that the website was created on or about July 14, 2011 (after Clark was terminated but before his laptop was returned) and transmitted Wells Fargo's confidential and proprietary information and bank records. [#1-pp.7-8].

When plaintiff accessed the website on August 2, 2011, it discovered links to documents consisting of hundreds of pages some of which contained private customer information including Wells Fargo customers' names, addresses, details of loans for which they had applied and other information protected by Clark's employment agreements. [#1-p.8]. On August 3, 2011, plaintiff's counsel emailed, overnight-mailed and hand-delivered a letter to Clark demanding that he remove this information from the website by 3:00 pm, August 4, 2011¹ and return all protected information to the bank. [#1-p.8]. To date defendant has not returned anything

¹ As of the time of filing its complaint that had not been done however it does appear when I tried to access the site that Clark has now disabled the links and changed the page's content to strange but not bank related postings. I have attached today's website contents.

except the laptop to the bank.

Defendant attached ten exhibits² to his response to the court's order to show cause. [#12] In his response defendant argues that: (1) the information on the website was password protected [#12-Ex.8]; (2) he qualifies as a whistleblower because he has filed a complaint about Wells Fargo on the SEC website [#12-Ex.2]; (3) this proceeding is a essentially a strategic lawsuit against public participation (SLAPP) suit because of his complaints [#12-Ex.4]; (4) the injunction must be considered along with his allegations against Wells Fargo of "organized system fraud", "racketeering, internal mechanisms to conceal truth and influencing a government process" [#12-Ex.7]; (5) all data presented at www.wfopsreport.com is a public record and protected by defendant's First Amendment rights; (6) no information displayed are trade secrets [#12-Ex.3]; (7) content on the site has been changed as of August 10, 2011; (8) plaintiff has caused defendant to be "haul[ed] . . . away in chains and no shoes" at 6 pm on July 29, 2011, by the police and (9) plaintiff's arguments are based on heresay and lies.

Discussion

A preliminary injunction is "an extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled

² Because some of defendant's supporting documents appear to contain personal confidential material such as names with addresses and driver's licence numbers, they have not been scanned into the docket.

to such relief." *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 31 (2008). To obtain a preliminary injunction, plaintiff "must establish that (1) it is likely to succeed on the merits; (2) it is likely to suffer irreparable harm in the absence of preliminary relief; (3) the balance of equities tips in its favor; and (4) a preliminary injunction is in the public interest." *Sierra Forest Legacy v. Rey*, 577 F.3d 1015, 1021 (9th Cir 2009) (citing *Winter*, 555 U.S. at 24-25)).

Upon consideration of the pleadings, and the record including exhibits and declarations, I make the following findings.

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1331 and 1332, and supplemental jurisdiction pursuant to 28 U.S.C. § 1367.
2. Plaintiff Wells Fargo Bank, N.A. ("Wells Fargo") has demonstrated a likelihood of success on the merits, having shown to the court's satisfaction that defendant Clark disclosed trade secrets and confidential information publicly, through disseminating the trade secrets and confidential information to third parties and posting it on a website at www.wfopsreport.com, in violation of his Employment Agreement; and the Computer Fraud and Abuse Act.
3. Wells Fargo will suffer irreparable harm and loss, for which it has no adequate remedy at law, if Clark is

permitted to disclose and/or continue to disclose to third parties Wells Fargo's trade secrets and confidential information, and to retain in his possession, custody, or control the trade secrets and confidential information he misappropriated from Wells Fargo.

4. Greater injury will be inflicted upon Wells Fargo by the denial of a preliminary injunction than would be inflicted upon Defendant Clark by the granting of such relief.
5. Defendant Clark has already disclosed confidential information through his website and his filings.
6. The pleadings, declarations and the attached exhibits, submitted by the parties set out specific facts showing that immediate and irreparable injury will result to Wells Fargo if this injunction is not entered.

I therefore issue this Preliminary Injunction in accordance with the terms set forth below:

1. Clark, and all others who are in active concert or participation with Clark and who received actual notice of this Preliminary Injunction, are immediately enjoined from directly or indirectly using or disclosing to any third parties Wells Fargo's trade secrets and confidential information, specifically including, but not

limited to, any information concerning current or former customers of Wells Fargo or of any Wells Fargo subsidiaries. This specifically includes removing Wells Fargo's trade secrets and confidential information, such as any information concerning current or former customers of Wells Fargo or any Wells Fargo subsidiaries, from any public forum, including any website, on which Clark has posted or disclosed this confidential information.

2. Within a reasonable time not to exceed five business days, of receiving actual notice of this Preliminary Injunction, by personal service or otherwise, Clark shall identify in writing to Wells Fargo all of Wells Fargo's trade secrets and confidential information in his possession, custody, or control, specifically including, but not limited to, any information concerning current or former customers of Wells Fargo or of any Wells Fargo subsidiaries.
3. Within a reasonable time not to exceed five business days, of receiving actual notice of this Preliminary Injunction, by personal service or otherwise, Clark shall disclose to Wells Fargo in writing the identity of any person, entity, or destination, including but not limited to internet websites, to which Clark transmitted, posted, or communicated Wells Fargo's trade secrets and

confidential information, specifically including, but not limited to, any information concerning current or former customers of Wells Fargo or of any Wells Fargo subsidiaries.

4. Within a reasonable time not to exceed five business days, of receiving actual notice of this Preliminary Injunction, by personal service or otherwise, Clark shall immediately return to Wells Fargo, by mailing to Wells Fargo's counsel, Ogletree, Deakins, Nash, Smoak & Stewart, P.C., via certified mail, the originals and all copies of paper documents containing or constituting Wells Fargo's trade secrets and confidential information, specifically including, but not limited to, any information concerning current or former customers of Wells Fargo or of any Wells Fargo subsidiaries.
5. Clark shall preserve all electronic files containing or constituting Wells Fargo's trade secrets and confidential information, specifically including, but not limited to, any information concerning current or former customers of Wells Fargo or of any Wells Fargo subsidiaries, that are stored on any electronic storage device in his possession, custody, or control.
6. Wells Fargo is granted leave to commence discovery in aid of the pending proceedings before the Court, and Clark

shall respond to any document request within 30 calendar days after it is served upon him and shall appear for a deposition within 15 business days after a notice of deposition is served upon him.


7. The requirement that Wells Fargo post a bond is waived.

Conclusion

Plaintiffs' Motion for a Preliminary Injunction and to waive bond [#2] is GRANTED pursuant to the terms detailed above.

IT IS SO ORDERED

Dated this 22nd day of August, 2011


UNITED STATES DISTRICT JUDGE